



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. HMA 05069-09

CAGAN'S PHARMACY,

Petitioner,

v.

DMAHS,

Respondent.

Pamela Mandel, Esq. for petitioner (Mandel & Mandel, attorneys)

Julie Hubbs, Deputy Attorney General for respondent (Anne Milgram, Attorney General of New Jersey, attorney)

Record Closed: July 2, 2009

Decided: November 25, 2009

BEFORE **IMRE KARASZEGI, Jr.**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Cagan's Pharmacy, appeals the denial of its application to participate in the New Jersey Medicaid program as a pharmacy services provider. The New Jersey Division of Medicaid Assistance and Health Services (DMAHS) contends that good cause exists to deny the application because petitioner submitted a "false or fraudulent" application with the meaning of N.J.A.C. 10:49-11.1(d)(22), and violated "regulations

governing the conduct” of the pharmacy within the meaning of N.J.A.C. 10:49-11.1(d)(7).

Petitioner’s application was denied by letter from DMAHS dated March 31, 2009. Petitioner requested a hearing by letter dated April 13, 2009. On April 23, 2009, DMAHS transmitted the matter to the Office of Administrative Law (OAL), for a hearing pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. I heard the matter on June 1, 2009. The parties submitted post-hearing summations, after which, the record closed. Orders of extension were entered extending the time for filing this decision.

FACTUAL DISCUSSION

Background

I **FIND** the following undisputed background **FACTS**:

On December 4, 2008, petitioner submitted a pharmacy provider application to DMAHS in order to become a New Jersey Medicaid provider. Question thirty-two of the Medicaid provider application requests petitioner to list the days and hours of operation. Petitioner answered “10-6” Monday through Friday, and “closed” on Saturdays and Sundays. Question thirty-five of the provider application asks the applicant to “list all employed or associated registered pharmacists.” Petitioner listed Deepa Chawlani as a staff pharmacist, and Padma Anumolu as the pharmacist-in-charge. Question thirty-nine of the provider application asks if any person or entity named in response to questions 1, 9, 15, 35(b) or 35(c) own or have any interest in, or relationship with any other corporation, partnership or other entity providing services under any DMAHS, or any other programs administered in whole or in part by DMAHS. Petitioner responded “No.” On March 31, 2009, DMAHS denied petitioner’s Medicaid provider application. The basis for the denial was as follows: 1. Violations of any laws, regulations or code of ethics governing the conduct of occupations or professions or regulated industries pursuant to N.J.A.C. 10:49-11(d)(7); 2. Submission of a false or fraudulent application

for provider status to the Program or its fiscal agent pursuant to N.J.A.C. 10:49-11.1(d)(22).

Testimony

Cynthia White, a medical review analyst for the Office of Medicaid Inspector General (OMIG) testified that as part of her review of petitioner's Medicaid provider application, she called the telephone number listed on the provider application several times on February 18, 2009 in order to return the telephone call of a male, who identified himself as being from Cagan's Pharmacy. Each time she called, she received a recording. Later, on February 18, 2009, White and a colleague drove to Cagan's and arrived at approximately 3:15 p.m. Upon arrival, a gate at the entrance to the pharmacy was closed. They remained at the location for approximately one-half hour and took photographs of the pharmacy. White stated that she called Cagan's "about two more times" before 4:00 p.m. and also after 4:00 p.m. Each time White called, there was a recorded message with "no space to leave a message."

White made additional site visits on February 25, 2009 and February 26, 2009 at 3:05 p.m. and 10:15 a.m. respectively. The metal gates covered the front windows of Cagan's on both days. On February 25, 2009, White remained at the location for approximately fifteen minutes and took additional photographs. She telephoned the pharmacy afterwards but received no answer. On February 26, 2009, White testified that the metal gates were opened about 10:40 a.m. A handwritten note was taped to the window stating, "This week the pharmacy will close at 2:00 p.m. due to an emergency." She observed one male in the front of the store. As she proceeded inside, she observed that while the pharmacy area was open, no individual was working in a lab coat as a pharmacist. She also did not see any licenses in the pharmacy area. White also testified that she determined that the owner, Deepa Chawlani, was employed by another Medicaid provider, Specialty Pharmacy in Roselle, New Jersey, at the time she submitted the provider application.

Subba Nageli, a licensed pharmacist and friend of Chawlani's husband, testified that he worked at Cagan's Pharmacy on February 12, 2009, February 13, 2009 and

February 18, 2009. Nageli stated that on February 18, 2009, he worked at Cagan's from 10:00 a.m. until 2:30 p.m. After leaving the pharmacy, he returned at 4:30 p.m. and continued to fill prescriptions.

Deepa Chawhani, a licensed pharmacist and applicant/owner in this matter, indicated that she purchased Cagan's Pharmacy in October 2008 and continued working at another pharmacy, Specialty Pharmacy. At the time of her Medicaid provider application, Chawhani kept Padma Anumolu as the pharmacist-in-charge at Cagan's until she could get Medicaid provider approval. In February 2009, Chawhani stated that Anumolu gave her short notice and left for a family emergency in India. Chawhani attempted to find coverage, however, the "business was not generating enough money" and she relied on acquaintances who would work for free. She confirmed that she was unable to arrange for coverage and did not work as the pharmacist-in-charge at Cagan's on February 26, 2009. Chawhani stated that she left her other pharmacist jobs in March 2009 and assumed the responsibility of pharmacist in charge at Cagan's on March 26, 2009.

After carefully considering the testimonial and documentary evidence presented, I **FIND** that Cagan's Pharmacy was not open for operation from 10:00 a.m. to 6:00 p.m. on February 18, 2009, February 25, 2009 and February 26, 2009. I **FIND** that notwithstanding pharmacist Nageli's limited presence at Cagan's Pharmacy, no pharmacist was on duty on February 26, 2009. I **FIND** that petitioner submitted a false answer to question thirty-nine of the Medicaid provider application, failing to acknowledge her continued employment at Specialty Pharmacy at the time of her application.

ANALYSIS AND CONCLUSIONS OF LAW

Medicaid is a federally created program designed to ensure the availability of medical care to people who could not otherwise afford it. 42 U.S.C. 1396(a). States participating in the program must submit a "State Plan" for federal approval that describes procedures through which providers will be selected and reimbursed and abuses will be prosecuted. 42 C.F.R. 447.252(b). In New Jersey, the Medicaid

program is administered by DMAHS pursuant to the New Jersey Medical Assistance and Health Services Act (the Act), N.J.S.A. 30:4D-1 et seq. and N.J.S.A. 30:4D-7. The Act requires that DMAHS take all necessary steps, consistent with fiscal responsibility, for the proper administration of the New Jersey Medicaid program.

DMAHS has, by regulation, imposed specific conditions on participation as a provider of pharmaceutical services. The process of enrollment as a Medicaid provider includes the submission of a formal application. N.J.A.C. 10:49-3.2. Pursuant to N.J.A.C. 10:49-3.2(f), DMAHS may deny an application if “good cause for exclusion of the provider from program participation exists under any of the provisions of N.J.A.C. 10:49-11.1(d).” The latter regulation specifies twenty-seven examples of actions that “shall constitute good cause” for denial of an application. Here, DMAHS found good cause to deny petitioner’s application under both N.J.A.C. 10:49-11.1(d)(22), (the submission of a false or fraudulent application) and N.J.A.C. 10:49-11.1(d)(7) (violations of laws, regulations or code of ethics governing the conduct of . . . regulated industries). Petitioner may not resubmit a provider application for a period of one year from the date of the denial. N.J.A.C. 10:49-3.2(d)(3).

In this case, petitioner acknowledged that Cagan’s Pharmacy was not open during the hours of operation indicated in the Medicaid provider application. In addition, petitioner acknowledged the absence of a pharmacist on February 26, 2009 and her failure to disclose, in question thirty-nine, that she was employed by Specialty Pharmacy at the time of her application. Petitioner’s counsel argues that, as to the hours of operation listed on the application, it was petitioner’s “intention” to open the hours stated and to have a registered pharmacist on duty. I disagree. Once an application is completed, the applicant certifies that the information “furnished” is “true, accurate and complete.” The intention of the applicant is not a part of the Medicaid provider application process. Based on the foregoing, I **CONCLUDE** that good cause existed for the denial of petitioner’s application to be a Medicaid provider, under N.J.A.C. 10:49-11.1(d)(22) and N.J.A.C. 10:49-11.1(d)(7).

ORDER

It is therefore **ORDERED** that the petition filed by Cagan's Pharmacy be **DISMISSED**.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, Mail Code #3, PO Box 712, Trenton, New Jersey 08625-0712**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

11/25/09

DATE

Date Received at Agency:

Date Mailed to Parties:



IMRE KARASZEGI, JR., ALJ

11/25/09

APPENDIX

LIST OF WITNESSES

For Petitioner:

Subba Nageli

Deepa Chawlani

Fnu Shab

For Respondent:

Cynthia White

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Cagan's Pharmacy Daily Log Report for February 18, 2009

P-2 Cagan's Pharmacy Daily Log Report for February 25, 2009

P-3 Cagan's Pharmacy Summary Log Report for February 26, 2009

P-4 Notice of change of pharmacist-in-charge dated March 25, 2009

For Respondent:

R-1 Pharmaceutical provider application dated December 4, 2008